HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION NO.11233 OF 1994

Between:

Bokam Simhadri (died) rep.by
his legal representatives

. . .Petitioners

AND

Visakhapatnam Port Trust and another

. . .Respondents

Counsel for the petitioners : Shri K.V.Subrahmanya Narusu

Counsel for the respondents : Ms. V.Uma Devi

Dated: 24th October, 2006

: ORDER :

In this petition, the petitioner Shri Bokam Simhadri, who died during the pendency of the writ petition and is represented by his legal representatives has prayed for quashing order dated 05/06.01.1994 passed by the Traffic Manager, Visakhapatnam Port Trust, Visakhapatnam (respondent No.2) for his removal from service. He has prayed further for quashing order dated 05.05.1994 vide which Chairman, Visakhapatnam Port Trust – cum - Appellate Authority (for short 'the Appellate Authority') dismissed the appeal preferred by him against the order of punishment.

The Facts:

Late Shri Bokam Simhadri was engaged in the services of Ore handling Cooperative Society in 1959 as casual labourer. The said society was controlled by Visakhapatnam Port Trust (for short 'the Trust'). In the course of service, he was first promoted to 'C' category in the cadre of workers and then to 'B' and 'A' categories respectively. Vide Memo dated 21-8-1992, respondent No.2 instituted departmental enquiry against late Shri Bokam Simhadri on the charge of having obtained employment by impersonation. Late Shri Bokam Simhadri denied the charge. Respondent No.2 did not feel satisfied with the explanation of the delinquent and appointed Assistant Traffic Manager as the enquiry officer, who after conducting detailed enquiry submitted report dated 12.01.1993 with the finding that the charge of impersonation has been proved against the delinquent. Respondent No.2 accepted the finding recorded by Enquiry Officer and issued notice dated 14.10.1993 to Shri Bokam Simhadri requiring him to show

cause as to why he may not be removed from service. The latter submitted representation dated 08.12.1993 in which, he not only questioned the procedure adopted by Enquiry Officer but also the finding recorded by him on the merits of the charge. Thereafter, respondent No.2 passed order dated 05.01.1994 whereby he imposed the penalty of removal from service on the delinquent. The appeal preferred by late Shri Simhadri was dismissed by the Appellate Authority vide order dated 5/6-5-1994.

The petitioner has challenged the impugned orders on several grounds including the one that the same have been passed in violation of Visakhapatnam Port Trust Employees (Classification, Control and Appeal) Regulations, 1968 (for short, the Regulations).

I have heard the learned counsel for the parties and perused the record.

In my opinion, the appellate order is liable to be annulled on the ground of violation of the mandate of Regulation 24 of the Regulations, which represents statutory embodiment of one of the facets of rules of natural justice viz. every quasi judicial authority must record reasons showing application of mind.

For the sake of convenience, Regulation 24 is reproduced below:

24. CONSIDERATION OF APPEAL:

In the case of an appeal against an order of suspension the appellate authority shall consider whether in the light of the provisions of Regulation 7 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 8 or enhancing any penalty imposed under the said Regulation, the appellate

authority shall consider –

a) where the procedure laid down in these regulations has been complied with, and if not, whether such non-compliance has resulted in the failure of justice;

b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

c) whether the penalty or enhanced penalty imposed is adequate, inadequate or severe and pass orders –

i) confirming, enhancing, reducing or setting aside the penalty; or

ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that ---

i) The Government shall be consulted in all cases where such consultation is necessary;

ii) if such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clause (vi) to (x) of Regulation 8 and an inquiry under Regulation 10 has not already been held in the case, the appellate authority shall, subject to the provisions of Regulation 15, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Regulation 10 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit;

iii) “if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clause (v) to (ix) of Regulations-8 and an enquiry under Regulation-10 has been held in the case, the appellate

authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty".

iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Regulation-12, of making a representation against such enhanced penalty.

3) In an appeal against any other order specified in Regulations 19 to 21, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

An analysis of the above reproduced regulation makes it clear that the Appellate Authority is required to consider whether the procedure prescribed in the regulations has been complied with and if not, whether non-compliance of the procedure has resulted in failure of justice; whether the findings recorded by the disciplinary authority are warranted by the evidence on record and whether the penalty imposed by the Disciplinary Authority is adequate, inadequate or severe. Consideration of these factors necessarily involve an objective application of mind by the Appellate Authority to the record of enquiry, which necessarily include the memorandum of charges, reply of the delinquent, enquiry report, tentative opinion formed by Disciplinary Authority, show cause notice issued to the delinquent, his reply, the order of punishment and the contents of the memo of appeal.

Rule 22 of Railway Servants (Disciplinary Appeal) Rules, 1968 which is pari materia to Regulation 24 of the Regulations (as reproduced above) came up for interpretation before the Supreme Court in **Ram Chander v. Union of India**[1]. After analyzing the rule,

the Supreme Court held as under:

> "9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, R. 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under R. 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. R. 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in R. 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in R. 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

I shall now consider whether order dated 5/6-5-1994 passed by the appellate authority satisfies the requirement of Regulation 24 and the rules of natural justice. A reading of that order makes it clear that after making a brief reference to the factum of enquiry instituted against the petitioner and the punishment imposed by respondent No.2, the Appellate Authority dismissed the appeal preferred by the petitioner by recording the following order:

> "The undersigned have considered the facts of the case carefully, and after perusal of the relevant records, the undersigned found that he committed a fraud and there are

no grounds to interfere with the orders passed by the Disciplinary Authority.

Therefore, the appeal dt: 11-2-1994 of Shri B.Simhadri, O.H.L. T.NO:1592 of the Traffic Department, has been rejected and the orders of the Traffic Manager (Disciplinary Authority) are confirmed."

In reply to the Court's query, Ms.V. Uma Devi candidly stated that no other document is available in the file to show that the Appellate Authority had separately recorded reasons for dismissing the appeal preferred by the petitioner. It is, thus, clear that while dismissing the appeal, the Appellate Authority did not advert to the mandate of Regulation 24. The Appellate Authority has not recorded a finding that the enquiry was held in accordance with the procedure prescribed in the Regulations and that the delinquent was given full opportunity to defend himself. The Appellate Authority also did not advert to the points raised in the memo of appeal and did not assign any reason for not accepting the same. Therefore, the appellate order is liable to be quashed on both the grounds enumerated in the writ petition.

In view of the above conclusion, I do not consider it necessary to examine the legality of order dated 05.01.1994.

In the result, the writ petition is partly allowed. Order dated 05.05.1994 passed by the Appellate Authority is quashed with the direction that the appeal preferred by late Shri Bokam Simhadri be reconsidered and decided in accordance with Regulation 24 of the Regulations. The needful be done by the Appellate Authority within a period of three months from the date of submission/receipt of this order. The legal representatives of the petitioner are given liberty to submit additional grounds of appeal within a period of four weeks from today. The Appellate Authority shall consider the additional grounds and also afford opportunity of personal hearing, if a request to that

effect is made by the legal heirs of late Shri Bokam Simhadri.

G.S.SINGHVI, CJ

24th October, 2006.

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[1] AIR 1986 SC 1173